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May 20, 2002

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, 2nd Floor  
Boston, MA 02110

Re: Investigation by the Department of Telecommunications and Energy into  
the Petition of KeySpan Energy Delivery New England for approval of  
Firm Gas Transportation Agreements with Algonquin Gas Transmission  
Company, D.T.E. 02-18

Dear Secretary Cottrell:

Pursuant to the briefing schedule established by the Department of Telecommunications and Energy ("Department") in this proceeding, the Attorney General submits this letter as his Brief to address the petition of KeySpan Energy Delivery New England ("KeySpan" or the "Company") for approval of five<sup>1</sup> inter-related firm gas transportation agreements with Algonquin Gas Transmission Company ("Algonquin"). As further discussed herein, the Attorney General recommends that the Department only grant conditional approval of the transportation capacity or precedent agreements pending further review and investigation into the prudence and public interest of these contracts.

## **I. STANDARD OF REVIEW**

The Department's standard of review for approval of additional transportation resources

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<sup>1</sup> The Company has included in its filing two precedent agreements for transportation capacity on the proposed HubLine pipeline, one for Boston Gas Company and one for Colonial Gas Company, two negotiated rate agreements, one for each, Boston and Colonial, and an interim service agreement which provides for transportation on the Algonquin system prior to the construction of the HubLine. Exhibits KEDNE 2-6. Claiming that these agreements will not be executed until the Federal Energy Regulatory Commission ("FERC") certifies the HubLine project, the Company has not filed two related service agreements referred to in both the precedent and the rate agreements. The Company anticipates the approval will be granted in June or July 2002.

requires that the commodity resources have been included in the company's most recently approved long-range forecast and supply plan or that the Company demonstrate that the proposed resource acquisitions are consistent with the public interest and provide "a reliable, diverse and flexible gas supply at reasonable prices..." consistent with approved planning and portfolio objectives. *See Commonwealth Gas Company*, D.P.U. 94-174-A, pp. 26-28 (1996); *see also*, Tr. pp. 45-46.

## II. ARGUMENT

### A. The HubLine Pipeline Capacity Was Not Included in Either Colonial or Boston's Most Recently Approved Long-Range Forecast and Supply Plan.

The HubLine pipeline capacity was not included in either Colonial or Boston's most recently approved long-range forecast and supply plan. *See Colonial Gas Company*, DTE 98-90 (2000); *Boston Gas Company*, DTE 97-81 (2000). The Company filed its first integrated<sup>2</sup> long-range forecast and supply plan ("Supply Plan") in a related proceeding, D.T.E. 01-105, on November 30, 2001 several months *after* the Company had signed the HubLine agreements. *See* Exh. AG 1-2. The Company has failed to meet its burden of demonstrating that this capacity is part of a Department approved Plan.

### B. The Company Has Failed To Establish That The HubLine Capacity Provides "a reliable, diverse and flexible gas supply at reasonable prices."

The Company has not provided an evidentiary basis for the Department to conclude that the HubLine capacity provides "a reliable, diverse and flexible gas supply at reasonable prices..." consistent with approved long-range planning and portfolio objectives. Although the Company signed the agreements in June of 2001, the Company's petition for approval of the HubLine contracts is lacking in evidentiary support and is in many ways premature. This lack of evidentiary support for capacity and the prematurity of the HubLine transaction is demonstrated by the following:

\* The service agreements<sup>3</sup> are not reviewable in this proceeding because they have

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<sup>2</sup> Boston Gas Company, Colonial Gas Company and Essex Gas Company were acquired by KeySpan in 2000. During 1998-1999 Eastern Utilities, the former parent of Boston Gas Company, acquired Essex and Colonial. Prior to the filing of the November long-range forecast and supply plan the companies had filed separate plans with the Department.

<sup>3</sup> During cross examination the Company's witness indicated that the service agreements would not be executed until June or July and that the terms and conditions would not deviate from the terms and conditions of the precedent agreements. According to the Company's counsel, the Department would be approving these contracts as part of this proceeding. Tr. pp. 9-12. It should be noted that during the course of the evidentiary hearing, the Company's witness was asked when the interim service agreement terminated. The witness testified that it terminated at the in-service date of the HubLine pipeline, yet she

not been executed (Tr. pp. 9-11);

- \* The Company has not procured a gas supply to be transported on the HubLine, nor does it have any assurance that gas supply will be available to it when the HubLine is in-service (Tr. pp. 42-43);
- \* Construction of the pipeline has not begun, pushing the in-service date out to Spring of 2003 or later--increasing the cost of the project over which the Company has no control or even review (Tr. pp. 25-26); and
- \* The negotiated rates for HubLine service will not be filed for approval by FERC until 30 days before the in-service date--rendering the economic analysis supporting the HubLine questionable (Tr. pp. 29-30).<sup>4</sup>

**C. The Department Should Reject The Company's Arguments That It Has Complied With The Department's Requirements**

The Hearing Officer requested that the Company respond to a record request as to what the Company would do should the Department approve the agreements on a conditional basis pending the approval of the long-range forecast and supply plan in DTE 01-105. Tr., pp. 44-46. In its response, the Company attempts to overcome its filing deficiencies by tying the needs assessment presented in this docket to the approved forecasts in Colonial and Boston Gas' most

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could not provide evidence of this termination date by reading the interim service agreement or the precedent agreements and was required to respond to a record request. In the response, the Company indicates that the termination date is not contained in any of the agreements presented in the filing; but that the termination date would be included in the as yet to be executed service agreement. The response also included a confirming statement from Algonquin. RR-AG-5.

<sup>4</sup> The Company has presented economic analyses of the HubLine and several alternatives. The analyses indicate that the HubLine has an economic advantage over the alternatives based on several key assumptions among which is the approval of the negotiated rate for the full 10 year term, and one analysis assumes 100% load factor and certain gas price assumptions. The HubLine analyses did not utilize the Company's SENDOUT model which the Department has approved for use by the Company in determining the optimal, least cost supply plan. Tr. p. 65 and *Boston Gas Company*, DTE 97-81, p. 49 (2000). In addition, the economic analysis did not consider the Company's own estimates of the volumes that will flow on the HubLine during normal conditions. The estimated load factors are significantly less than the 100% used in the Company's analysis and in the initial years may (if dispatched as shown in the Company's filing in D.T.E. 01-105, Table G-22N) result in costs per MMBtu greater than the costs to provide LNG to fulfill the needs on the Cape. See RR-AG-1 (dispatch data from D.T.E. 01-105) and Exhibits EDC-3 and EDC-4 (Computations of Cost Alternatives--confidential). Without a thorough review of the present value of the HubLine costs based on the dispatch of an optimal portfolio, comparing all viable alternatives, including previously approved plan to add new LNG capacity, and including the costs of reduced utilization of higher cost capacity in the analyses, no conclusion can be drawn as to whether the HubLine is the least cost alternative or whether it is even in the public interest.

recently approved forecasts. The effort is flawed. The Company attempts to simply extrapolate its forecasts of aggregate demand and supply volumes from DTE 98-90 (Colonial) and DTE 97-81 (Boston) and compare these values to the equivalent values presented in the Company's pending forecast and supply plan that are exhibits in this case. RR-DTE-1. The aggregated data are meaningless, especially in the case of the Boston Gas Company data which include both the Tennessee and the Algonquin sides of the Company's operations. This combination of the two areas may mask any deficiencies that are unique to one side with excesses that may be available on the other. The expedited schedule requested by the Company in this case does not provide the opportunity for full discovery and cross examination of witnesses--activities which will be accomplished during the long-range forecast and supply plan proceedings scheduled in DTE 01-105. The Attorney General maintains that the long-range forecast and supply plan docket is the appropriate venue for the examination of all aspects of the Company's resource portfolio and its underpinnings to determine the portfolio's adequacy, reliability and conformance with least cost requirements.

### III. CONCLUSION

The Company has failed to demonstrate that the HubLine related agreements are consistent with an approved forecast and supply plan, or, in the absence of such an approved plan, has failed to provide sufficient evidence that the HubLine arrangements are part of "a potentially better combination of aggregate supply resources than what was proposed in the Company's last approved forecast and supply plan." D.P.U. 94-174-A, p. 28. The Attorney General therefore requests that the Department issue an Order granting conditional approval of the transportation agreements pending further review and investigation into the prudence and public interest of these contracts. Granting conditional approval of the transportation agreements under these circumstances is consistent with Department precedent. *See Bay State Gas Company*, D.P.U./D.T.E. 95-128, p. 1 (1998); *see also Bay State Gas Company Long-Range Forecast and Supply Plan*, D.T.E. 98-86, p. 27 (2000)(the Department approved two firm transportation agreements between Bay State and PNGTS noting that its approval of those contracts did not represent a finding of prudence nor a finding that those contracts were in the public interest). The prudence or public interest of a precedent agreement for purposes of cost recovery may only be determined in rate cases or CGAC proceedings. *See Commonwealth Gas Company*, D.P.U. 94-174-A, p. 30 (1996).

Very truly yours,

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Wilner Borgella, Jr.  
Assistant Attorney General

WB/wb

cc: Sheila McIntyre, Hearing Officer (w/enc.)  
Service List (w/enc.)

